

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Implementation of Restructuring)	Docket No. 98-REN-New
Legislation (Public Utilities Code)	Notice of Business Meeting
Sections 381, 383.5 and 445)	RE: Petitions for Funding Award
[AB 1890, SB 90]): Renewables)	Extensions, New Renewable
)	Resources Account

**NOTICE OF RECOMMENDED COMMITTEE DECISIONS
REGARDING PETITIONS FOR EXTENSION OF FUNDING AWARDS**

The Energy Commission's Business Meeting will be held:

WEDNESDAY, June 11, 2003
1 p.m.
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Hearing Room A
Sacramento, California
(Wheelchair Accessible)

As part of its regularly scheduled Business Meeting on June 11, 2003, the Energy Commission will consider the Renewables Committee's (Committee) recommendations regarding petitions to extend funding awards under the New Renewable Resources Account, pursuant to Public Utilities Code Section 383.5(c)(2)(B) by FPL Energy LLC, Windland, Inc., and Riverside County Waste Management Department.

The Committee's findings and recommendations are presented in the enclosed four decisions:

1. Renewables Committee Decision on Petitions for Reconsideration by FPL Energy, LLC (Wind Ridge, LLC Project) and Windland, Inc. (Windland, Inc. Project)
2. Renewables Committee Decision on Petition of Riverside County Waste Management Department (Badlands Project)
3. Renewables Committee Decision on Petition of Riverside County Waste Management Department (Coachella Project)

4. Renewables Committee Decision on Petition of Riverside County Waste Management Department (Lamb Canyon Project)

In summary, the Committee recommends the following:

1. Based on the FPL and Windland petitions for reconsideration, the Committee recommends that the funding awards and on-line dates for the FPL Wind Ridge LLC and Windland, Inc. Projects be extended 24 months to December 31, 2003, and that the projects not receive any payments for energy generated after December 30, 2008. The Committee further recommends that the funding award amount for the FPL Wind Ridge LLC Project be reduced as specified in the Commission's adopted guidelines.
2. Based on the Riverside County Waste Management Department (Badlands Project) petition, the Committee finds that the RCWMD Badlands Landfill Gas Project was not operational by January 1, 2002 because of circumstances beyond RCWMD's control. The Committee recommends that the on-line date for the Badlands Landfill Gas Project be extended to December 31, 2003, and that the project not receive any incentive payments for generation after December 30, 2008.
3. Based on the Riverside County Waste Management Department (Coachella Project) petition, the Committee finds that the delay in on-line date for the RCWMD Coachella Landfill Gas Project was the result of circumstances beyond RCWMD's control. The Committee recommends that the on-line date for the Coachella Landfill Gas Project be extended to December 31, 2003, and that the project not receive any incentive payments for generation after December 30, 2008.
4. Based on the Riverside County Waste Management Department (Lamb Canyon Project) petition, the Committee finds that the delay for the Lamb Canyon Landfill Gas Project was not the result of circumstances beyond RCWMD's control, and recommends that the project's funding award be reduced one-sixtieth (1/60) for each month after January 1, 2002 that the project does not come on-line and that those funds be returned to the Renewable Resource Trust Fund for reallocation pursuant to the Commission's existing authority.

Public Participation

The Energy Commission's Public Adviser, Roberta Mendonca, provides the public assistance regarding participating in Energy Commission activities. If you would like like information on how to participate in the business meeting, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, FAX at (916) 654-4493, or e-mail at [pao@energy.state.ca.us]. If you have a disability and need assistance to participate in this meeting, please contact Lourdes Quiroz at (916) 654-5416 or by e-mail at [lquiroz@energy.state.ca.us] at least five days in advance.

If you have technical questions regarding the subject matter of this notice, please contact Suzanne Korosec by phone at (916) 654-4516 or by e-mail at [skorosec@energy.state.ca.us].

News media should direct inquiries to Claudia Chandler, Assistant Director, at (916) 654-4989 or by e-mail at [energia@energy.ca.gov].

Date: May 23, 2003

**STATE OF CALIFORNIA ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

ORIGINAL SIGNED BY
JOHN L. GEESMAN
Commissioner and Presiding Member
Renewables Committee

ORIGINAL SIGNED BY
JAMES D. BOYD
Commissioner and Associate Member
Renewables Committee

Date Mailed: May 30, 2003
Mass Mail List: Master 63 new.xls

**Renewables Committee
Decision on Petitions for Reconsideration
by Wind Ridge, LLC Project (FPL Energy, LLC)
and Windland, Inc. Project (Windland, Inc.)**

Summary

This decision is issued in response to the petitions for reconsideration submitted by FPL Energy, LLC (FPL) and Windland, Inc. (Windland) to the California Energy Commission (Commission) in response to the “Renewables Committee Decision on Petition of FPL Energy, LLC, Wind Ridge, LLC Project” and “Renewables Committee Decision on Petition of Windland, Inc. Project, Funding Award REN-98-016” (attached).

FPL and Windland state that they have obtained transmission access for the Wind Ridge, LLC Project and the Windland, Inc. Project, and that they are prepared to move forward immediately with the intent of completing the projects by December 31, 2003. FPL and Windland further state that given the high cost of obtaining transmission access, the funding awards from the Renewable Energy Program are “pivotal” in making the projects economically viable.

Based on the FPL and Windland petitions for reconsideration, the Committee recommends that the funding awards and on-line dates for the FPL Wind Ridge LLC and Windland, Inc. Projects be extended 24 months to December 31, 2003, and that the projects not receive any payments for energy generated after December 30, 2008. The Committee further recommends that the funding award amount for the FPL Wind Ridge LLC Project be reduced as specified in the Commission’s adopted guidelines.

FPL Wind Ridge LLC Project

FPL’s Wind Ridge LLC Project is a 30 megawatt wind project located in the Tehachapi wind resource area. The project was conditionally awarded \$4,273,500 in the October 2000 auction (NOA 500-00-504) based on FPL’s incentive bid of 0.74 cents/kWh.

At the time of the second auction, FPL submitted a project schedule to the Commission showing that the Wind Ridge LLC Project would be on-line by October 1, 2001. Due to delays in obtaining transmission access, the project was unable to meet that date and subsequently petitioned the Energy Commission for extension of its funding award pursuant to its adopted guidelines. FPL stated in its petition for extension that the expected on-line date for the project was January 1, 2005.

However, in the petition for reconsideration submitted by FPL on December 19, 2002, FPL states that the transmission constraints for the project have been resolved, and that the project will be constructed by December 31, 2003. FPL has provided documentation demonstrating that the project has obtained transmission access.

Windland, Inc. Project

Windland, Inc. was a winning bidder in the June 1998 auction (NOA 500-97-506). Windland was conditionally awarded \$4,384,000 (funding award agreement REN-98-016 approved by the Commission in February 1999) for its 19.8 megawatt Windland, Inc. Project, located in the Tehachapi wind resource area. This award was based on Windland's incentive bid of 1.37 cents/kWh.

At the time of the June 1998 auction, Windland submitted a project schedule to the Commission showing that the project would be on-line by December 1, 1999. However, due to delays in obtaining transmission access, the project was unable to meet that date and subsequently petitioned the Energy Commission for extension of its funding award pursuant to the Energy Commission's adopted guidelines. Windland stated in its petition for extension that the expected on-line date for the project was January 1, 2005.

However, in the petition for reconsideration submitted by Windland on December 19, 2002, Windland states that the transmission constraints for the project have been resolved, and that the project will be constructed by December 31, 2003. Windland has provided documentation demonstrating that the project has obtained transmission access.

Discussion

The "Renewables Committee Decision on Petition of FPL Energy, LLC, Wind Ridge, LLC Project" and "Renewables Committee Decision on Petition of Windland, Inc. Project, Funding Award REN-98-016" both state that "until the transmission constraint issues for the project are resolved, it makes no sense to tie up public funds in a project that has little chance of moving forward in the foreseeable future." The Committee's recommendation to cancel the FPL and Windland funding awards was based on this premise.

However, FPL and Windland have now obtained transmission access, thereby increasing the likelihood that the projects will come on-line by December 31, 2003 as asserted by the project developers.

The intent of the funding provided by the New Renewable Resources Account is to increase the amount of new renewable generation in California and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. In addition, Senate Bill 1078, signed by Governor Davis on September 12, 2002, establishes a Renewable Portfolio Standard and a target that 20% of the state's electricity come from renewable sources by 2017.

Committee Recommendation

The Committee believes that extending the FPL and Windland funding awards will help to meet the goals of both the New Renewable Resources Account and the Renewable

Portfolio Standard by providing additional renewable generation, and therefore recommends that the funding awards and on-line dates for the FPL Wind Ridge LLC and Windland, Inc. Projects be extended 24 months to December 31, 2003. The Committee further recommends that the funding award amount for the FPL Wind Ridge LLC Project be reduced as specified in the Commission's adopted guidelines.

Length of Award Extension

The Committee recommends that the on-line dates, for purposes of the funding awards, for the FPL Wind Ridge LLC Project and the Windland, Inc. Project be extended 24 months to December 31, 2003, and that the project not receive any incentive payments for generation after December 30, 2008.

Although Public Utilities Code section 383.5(d)(5), (formerly 383.5 (c)(2)(B)) allows for longer extensions, stating that "the date that a project begins electricity production may not extend beyond January 1, 2007," the Committee believes that extending the on-line dates for these projects beyond December 31, 2003 would tie up program funds unduly and be contrary to the public policy goals of the program.

Reduction of Funding Awards

At this time, the Committee does not recommend any funding award reduction for the Windland, Inc. Project. However, if the project is not on-line by December 31, 2003, or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an award reduction or cancellation is justified.

In accordance with the *Guidebook*, the Committee recommends that the award for the FPL Wind Ridge LLC Project be reduced as follows based on the project's on-line date.

Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
Sept. 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

While the *Guidebook* and NOA 500-00-504 contain provisions for additional reductions, the Committee does not believe an additional reduction is justified at this time if the FPL Wind Ridge LLC Project is on-line by December 31, 2003. However, if the project is not on-line by December 31, 2003, or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an additional award reduction or cancellation is justified.

**Renewables Committee
Decision on Petition of
Riverside County Waste Management Department
Badlands Landfill Gas Project
Funding Award REN-98-040**

Summary

This decision is issued in response to the petition submitted by Riverside County Waste Management Department (RCWMD) to the California Energy Commission (Commission) pursuant to the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) on August 2, 2002 for extension of the funding award RCWMD received for its Badlands Landfill Gas Project under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-97-506. Oversight of the Commission's Renewable Energy Program and therefore the authority to review these petitions and render a decision was subsequently assigned to the Renewables Committee (Committee).

Pursuant to its adopted guidelines, the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on RCWMD's petition for the Badlands Project, the Committee finds that the delays of the Badlands Project were the result of circumstances beyond RCWMD's control and recommends that the project's funding award and required on-line date be extended 24 months to December 31, 2003.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the RCWMD Badlands Landfill Gas Project.

Program Overview

Assembly Bill 1890 ([AB 1890], enacted September 23, 1996) provides \$540 million to support renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable generators that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers submit bids for the level of incentive that will allow them to compete in the broader electricity market. Bids must also include a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The first auction was held in June 1998. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were completely allocated. Auction winners were notified in writing on July 10, 1998 that their projects were accepted as eligible for funding.

According to the *Guidebook for the Renewable Energy Program - Volume 2, New Renewable Resources Account* and the NOA 500-97-506, winning projects from the first auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-97-506 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2001 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay resulted from circumstances beyond a project developer’s control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under this amendment. These revised guidelines are set forth in Chapter 7 of the Commission’s *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of a complete petition the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision will contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when the Commission formally approves them at a regularly scheduled Business Meeting.

It should be noted that the extension provisions of Public Utilities Code section 383.5(c)(2)(B) were recently recodified under Senate Bill 1038 (Sher, Statutes of 2002, Chapter 515) and are now set forth in Public Utilities Code section 383.5(d)(5). Except for the citation, these extension provisions remain unchanged.

RCWMD Badlands Landfill Gas Project

RCWMD was a winning bidder in the June 1998 auction (NOA 500-97-506). RCWMD was conditionally awarded \$1,043,538.30 (funding award agreement REN-98-040, approved by the Commission in June 1999) for its 2.0 megawatt Badlands Landfill Gas Project, located in Riverside County. This award was based on RCWMD's incentive bid of 1.47 cents/kWh.

At the time of the June 1998 auction, RCWMD submitted a project schedule to the Commission showing that the Badlands Landfill Gas Project would be on-line before January 1, 2002, identifying an on-line date of December 15, 2001. However, the project has experienced a series of delays in project development and currently reports a revised on-line date of July 1, 2005.

RCWMD Petition

RCWMD submitted a formal petition to the Commission on August 2, 2002, asking to have the award for the Badlands Landfill Gas Project extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to determine that the project was not operational by January 1, 2002 due to "circumstances beyond the control of the developer" and seeks a 42 -month extension to the on-line date for the Badlands Landfill Gas Project to July 1, 2005.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows will first address the requisite findings under the law, then the length of any funding award extension and lastly any appropriate reduction or penalty of the project's award.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission's New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer's control. This law is now set forth in Public Utilities Code section 383.5(d)(5), but was previously set forth in Public Utilities Code section 383.5(c)(2)(B), and provided as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, *unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer.* Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond RCWMD's control that prevented the project from coming on-line by January 1, 2002.

In its petition, RCWMD states that the on-line date was delayed due to several factors. The original project consisted of two engines with a total bid capacity of 2.0 MW. RCWMD subsequently decided to accelerate construction of the first engine, which was brought on-line in January 26, 2001. After the first few months of operation, it became clear that the quantity of landfill gas available to run the engine was significantly below what had been anticipated, in part because the existing horizontal landfill gas collector wells were not delivering gas due to the weight of the trash above them. RCWMD installed a number of new vertical and horizontal collector wells to address the problem.

In April 2000, RCWMD entered into a contract with Enron Energy Services (Enron) for the purchase of the power produced by the Badlands Landfill Gas Project, along with four other landfill gas projects. When Enron filed for bankruptcy in December 2001, RCWMD discontinued power production upon advice from counsel until the effect of the bankruptcy on the Enron contract could be determined. In February 2001, RCWMD resumed delivery of power to the grid, again on advice of counsel, while negotiating a

termination of the Enron contract. At this time, the Engineering Certificate documenting the on-line status of the first engine was submitted to the Energy Commission.

Enron's power sales contract with RCWMD was terminated on June 31, 2002, at which point RCWMD secured an interim power sales agreement with the City of Riverside. This agreement allows for the operation of the plant while a longer-term agreement is being negotiated. RCWMD now intends to slowly increase the hours of operation of the plant until the amount of available gas being delivered by the new collection wells can be determined, and that data will be used to fine-tune the production model to determine when the second engine can be brought on-line.

According to the petition, the implementation of AB 939, which established a 50 percent waste reduction mandate for California's cities and counties, has drastically changed the amount of organic material being placed in California landfills. The effect of this change has not been modeled as yet. RCWMD claims that since the Badlands Landfill was developed after AB 939 was passed, it is a perfect opportunity to model the landfill gas production after the full effect of the green waste and other paper diversion programs has occurred.

Finding Regarding the Badlands Landfill Gas Project

Based on the petition, the Committee finds that the RCWMD Badlands Landfill Gas Project was not operational by January 1, 2002 because of circumstances beyond RCWMD's control. RCWMD's petition outlines the delays resulting from less-than-expected landfill gas production along with power purchase uncertainties arising from the bankruptcy of its purchaser, Enron. Neither of these circumstances were items within RCWMD's control.

RCWMD demonstrated its commitment to the project by bringing the first engine on-line well before the January 1, 2002 deadline. In addition, when it became clear that the landfill gas production was well below what was expected, RCWMD installed new gas collectors in an effort to address the problem.

Length of Award Extension

The Committee recommends that the on-line date for the Badlands Landfill Gas Project be extended to December 31, 2003, to allow RCWMD the time to bring the second engine on line, and that the project not receive any incentive payments for generation after December 30, 2008.

While Public Utilities Code section 383.5(d)(5) and former section 383.5(c)(2)(B) allow for longer extensions, stating that "the date that a project begins electricity production may not extend beyond January 1, 2007," the Committee believes that extending the on-line date for the Badlands Landfill Gas Project beyond December 31, 2003 would tie up program funds unduly and be contrary to the public policy goals of the program.

The Committee does not feel that extending the on-line date for the Badlands Landfill Gas Project to July 1, 2005, as requested in the petition, is appropriate. RCWMD's justification for the revised date is to allow proper landfill gas modeling to be completed to determine if there will be sufficient landfill gas production from the site to justify the installation of the second engine. If it does not, RCWMD states that it will request a reduction in its project award.

Despite the fact that landfill gas production is undeniably a circumstance beyond the developer's control, the response to that circumstance is certainly within the developer's control. Other projects participating in the program have faced similar situations with less-than-expected landfill gas production, and have either attempted to augment the amount of gas being delivered or have requested a reduction of their funding award to reflect the reduced amount of generation expected from the project. In RCWMD's case, the Committee's opinion is that tying up funding until July of 2005 contingent on the results of RCWMD's modeling effort is not the best use of public funds.

Reduction of Funding Awards

The *Guidebook*, NOA 500-97-506, and Funding Award Agreement REN-98-040 all contain provisions for reducing funding awards for auction winners for nonperformance or other reasonable cause. However, the Committee does not believe an award reduction for the Badlands Landfill Gas Project is justified at this time as long as the project is on-line by December 31, 2003.

If the project is not on-line by December 31, 2003 or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an award reduction or cancellation is justified.

**Renewables Committee
Decision on Petition of
Riverside County Waste Management Department
Coachella Landfill Gas Project
Funding Award Agreement REN-98-042**

Summary

This decision is issued in response to the petition submitted by Riverside County Waste Management Department (RCWMD) to the California Energy Commission (Commission) pursuant to the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) on August 2, 2002 for extension of the funding award RCWMD received for its Coachella Landfill Gas Project under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-97-506. Oversight of the Commission's Renewable Energy Program and therefore the authority to review these petitions and render a decision was subsequently assigned to the Renewables Committee (Committee).

Pursuant to its adopted guidelines, the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on RCWMD's petition, the Committee finds that the delay for the Coachella Landfill Gas Project was the result of circumstances beyond RCWMD's control, and recommends that the project's funding award and required on-line date be extended 24 months to December 31, 2003.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the RCWMD Coachella Landfill Gas Project.

Program Overview

Assembly Bill 1890 ([AB 1890], enacted September 23, 1996) provides \$540 million to support renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging

Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable generators that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers submit bids for the level of incentive that will allow them to compete in the broader electricity market. Bids must also include a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The first auction was held in June 1998. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were completely allocated. Auction winners were notified in writing on July 10, 1998 that their projects were accepted as eligible for funding.

According to the *Guidebook for the Renewable Energy Program - Volume 2, New Renewable Resources Account* and the NOA 500-97-506, winning projects from the first auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-97-506 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2001 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay resulted from circumstances beyond a project developer's control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under

this amendment. These revised guidelines are set forth in Chapter 7 of the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of a complete petition the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision will contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when the Commission formally approves them at a regularly scheduled Business Meeting.

It should be noted that the extension provisions of Public Utilities Code section 383.5(c)(2)(B) were recently recodified under Senate Bill 1038 (Sher, Statutes of 2002, Chapter 515) and are now set forth in Public Utilities Code section 383.5(d)(5). Except for the citation, these extension provisions remain unchanged.

RCWMD Coachella Landfill Gas Project

The Coachella Landfill Gas Project, with a capacity of .95 megawatts, was conditionally awarded \$537,166 (funding award agreement REN-98-042, approved by the Commission in June 1999) in the June 1998 auction (NOA 500-97-506). The award was based on RCWMD's incentive bid of 1.48 cents/kWh. The project is located in Riverside County.

At the time of the June 1998 auction, RCWMD submitted a project schedule to the Commission showing that the Coachella Landfill Gas Project would be on-line before January 1, 2002, identifying an on-line date of April 15, 2000. However, the project has been delayed and is currently requesting an on-line date of December 15, 2005.

RCWMD Petition

RCWMD submitted a formal petition to the Commission on August 2, 2002, asking to have the award for the Coachella Gas Project extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to determine that the project was not operational by January 1, 2002 due to "circumstances beyond the control of the developer" and seeks a 48-month extension to the on-line date for the Coachella Gas Project to December 15, 2005.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows will first address the requisite findings under the law, then the length of any funding award extension, and lastly any appropriate reduction or penalty of the project's award.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission's New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer's control. This law is now set forth in Public Utilities Code section 383.5(d)(5), but was previously set forth in Public Utilities Code section 383.5(c)(2)(B), and provided as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, *unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer.* Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond RCWMD's control that prevented the project from coming on-line by January 1, 2002.

In its petition, RCWMD states that there are three reasons that the Coachella Landfill Gas Project was not brought on-line by December 31, 2001. The first reason was that RCWMD has been awaiting satisfactory operation and reliable power sales at the Badlands Landfill Gas Project before proceeding with the Coachella Landfill Gas Project. The delays experienced by the Badlands Landfill Gas Project are outlined in the Committee proposed decision on that project. RCWMD states in its petition that, "The WMD does not want to proceed with the Coachella project until all the problems at the Badlands project are worked out."

The second reason identified in the petition is RCWMD's inability to obtain an open access transmission tariff (OATT) agreement with the Imperial Irrigation District (IID). RCWMD states that it cannot proceed with project construction until it knows that it will

be allowed to transmit power to the Cal-ISO grid, at what cost, and under what circumstances. RCWMD states that IID has recently adopted a revised OATT, which is under review by RCWMD staff to determine its impacts on the project's economic feasibility. In addition, IID may also require a new System Impact Study for the project, which may result in additional costs to RCWMD to accommodate its request for service from IID and therefore force RCWMD to seek alternative options.

The third reason for the delay is the lack of a power purchaser. RCWMD originally had a 10-year fixed power sales agreement with Enron Energy Services (Enron), which filed for bankruptcy in December 2001. RCWMD cannot proceed with construction until it has a long-term power sales contract with a viable purchaser.

Finding Regarding the Coachella Landfill Gas Project

Based on the petition, the Committee finds that the delay in on-line date for the RCWMD Coachella Landfill Gas Project was the result of circumstances beyond RCWMD's control, namely RCWMD's inability to obtain the necessary Open Access Transmission Tariff from Imperial Irrigation District.

However, the determination by RCWMD regarding whether the project will be economically feasible based on its review of IID's recently-adopted OATT is a circumstance within the developer's control.

Similarly, RCWMD's decision not to pursue the Coachella Landfill Gas Project pending satisfactory operation of another facility under development is also a circumstance entirely within the developer's control. Although RCWMD's decision is understandable, given its obligation to the citizens of Riverside County to ensure project feasibility before proceeding with construction, it is not a circumstance that is beyond RCWMD's control.

While the loss of Enron as a viable power purchaser was a circumstance beyond RCWMD's control, the Committee does not believe this loss affected the project's schedule or on-line date, since RCWMD's decision to move forward with the project was predicated on the successful operation of its Badland Landfill Gas Project.

Length of Award Extension

The Committee recommends that the on-line date for the Coachella Landfill Gas Project be extended to December 31, 2003, and that the project not receive any incentive payments for generation after December 30, 2008.

While Public Utilities Code section 383.5(d)(5) and former section 383.5(c)(2)(B) allow for longer extensions, stating that "the date that a project begins electricity production may not extend beyond January 1, 2007," the Committee believes that extending the on-line date for the Coachella Landfill Gas Project beyond December 31, 2003 would tie up program funds unduly and be contrary to the public policy goals of the program.

The Committee does not feel that extending the on-line date for the Coachella Landfill Gas Project to December 15, 2005, as requested in the petition, is appropriate. RCWMD's justification for the revised date is to (1) allow for analysis of the project's economic feasibility given the revised OATT from IID, (2) to ensure that "all the problems at the Badlands project are worked out," and (3) to secure a long-term power purchase agreement.

In the Committee's opinion, only item (3) above is a reasonable justification for extending the on-line date for the Coachella Landfill Gas Project. IID's requirement for a new System Impact Study and any additional costs incurred by RCWMD are speculation at this point in time, and cannot be used as grounds for extending the project's on-line date.

Regarding a power purchase agreement, given recent developments in the electricity market with the utility procurement proceeding and passage of a statewide renewable portfolio standard, RCWMD should be in a position to secure a new power purchase agreement in time to begin construction in 2003 and have the project on-line by December 31, 2003.

Reduction of Funding Awards

The *Guidebook*, NOA 500-97-506, and Funding Award Agreement REN-98-042 all contain provisions for reducing funding awards for auction winners for nonperformance or other reasonable cause. However, the Committee does not believe an award reduction for the Coachella Landfill Gas Project is justified at this time as long as the project is on-line by December 31, 2003.

If the project is not on-line by December 31, 2003 or by a reasonable period of time thereafter, the Committee recommends that the Commission re-evaluate the status of the project to determine if an award reduction or cancellation is justified.

**Renewables Committee
Decision on Petition of
Riverside County Waste Management Department
Lamb Canyon Landfill Gas Project
REN-98-043**

Summary

This decision is issued in response to the petition submitted by Riverside County Waste Management Department (RCWMD) to the California Energy Commission (Commission) pursuant to the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*. The petition was submitted to the Commission's Environmental and Energy Infrastructure and Licensing Committee (Committee) on August 2, 2002 for extension of the funding award RCWMD received for its Lamb Canyon Landfill Gas Project under the Commission's New Renewable Resources Account Auction, Notice of Auction 500-97-506. Oversight of the Commission's Renewable Energy Program and therefore the authority to review these petitions and render a decision was subsequently assigned to the Renewables Committee (Committee).

Pursuant to its adopted guidelines, the Commission may extend a project's funding award if it finds that the delays in a project's on-line date were the result of circumstances beyond the developer's control. Based on RCWMD's petition, the Committee finds that the delay for the Lamb Canyon Landfill Gas Project was not the result of circumstances beyond RCWMD's control, and recommends that the project's funding award be reduced one-sixtieth ($1/60$) for each month after January 1, 2002 that the project does not come on-line and that those funds be returned to the Renewable Resource Trust Fund for reallocation pursuant to the Commission's existing authority.

The Committee's finding and recommendations are discussed below following an overview of the Commission's Renewable Energy Program and the New Renewable Resources Account and a summary of the RCWMD Lamb Canyon Landfill Gas Project.

Program Overview

Assembly Bill 1890 ([AB 1890], enacted September 23, 1996) provides \$540 million to support renewable electricity generation technologies. These funds are collected from the ratepayers of the state's investor-owned utilities to support existing, new, and emerging renewable electricity generation technologies.

The Renewable Energy Program was established by Senate Bill 90 ([SB 90] enacted October 12, 1997) to distribute these funds. The program consists of four separate accounts, each addressing differing needs within the renewables industry: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging

Renewable Resources Account, and the Customer-Side Renewable Resource Purchases Account.

The New Renewable Resources Account was originally allocated 30 percent of the AB 1890 funds, or \$162 million, to provide assistance to renewable generators that became operational after September 26, 1996. These funds are intended to foster the development of new in-state renewable electricity generation facilities and secure for the state the environmental, economic, and reliability benefits that those facilities provide. Funds in the account are awarded through periodic “auctions” in which developers of prospective renewable energy projects compete for funding in the form of production incentives paid out over a maximum of five years.

The Energy Commission held three such auctions to date. Detailed rules for the auctions are contained in the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account (Guidebook*, available at [www.energy.ca.gov/renewables]), as well as in the solicitation document for each of the three auctions, Notice of Auction (NOA) 500-97-506, NOA 500-00-504 and NOA 6-01-3.

To participate in the auctions, developers submit bids for the level of incentive that will allow them to compete in the broader electricity market. Bids must also include a detailed project description, schedule, and estimate of how much renewable generation the project will provide during the first five years of operation.

The first auction was held in June 1998. Eligible bids in the auction were ranked from lowest cents per kilowatt-hour incentive request to highest. Beginning with the lowest request, eligible bids were accepted until funds were completely allocated. Auction winners were notified in writing on July 10, 1998 that their projects were accepted as eligible for funding.

According to the *Guidebook for the Renewable Energy Program - Volume 2, New Renewable Resources Account* and the NOA 500-97-506, winning projects from the first auction must come on-line (begin generating electricity) by December 31, 2001 or sooner to receive five full years of funding from the Commission. This on-line date requirement is based on the version of Public Utilities Code section 383.5(c)(2)(B) existing at the time the Notice of Auction 500-97-506 was developed.

In September of 2000, Governor Davis signed Assembly Bill 995 into law, which amended section 383.5(c)(2)(B) so that projects participating in the New Renewable Resources Account could come on-line later than December 31, 2001 and still receive five full years of funding, provided that the Commission makes a formal finding that the delay resulted from circumstances beyond a project developer's control.

At its regularly scheduled April 3, 2002 Business Meeting, the Commission adopted revisions to the program guidelines to incorporate a petition process for winning project developers to follow in applying to the Commission for a funding award extension under

this amendment. These revised guidelines are set forth in Chapter 7 of the Commission's *Overall Guidelines for the Renewable Resource Trust Fund*.

In summary, petitions must be sent to the Committee and specify the reasons for the project's delayed on-line date, explain why the petitioner believes the delay resulted from circumstances beyond the petitioner's control, identify the reasonable efforts taken by the petitioner to bring the project on-line by the date specified in the applicable auction solicitation, identify the additional time needed to bring the project on-line and why this time is needed, and include a revised project schedule identifying new completion dates for any milestones not passed as of the date of the petition. Within 30 days of receipt of a complete petition the Committee, in its discretion, will either issue a decision based on its consideration of the petition or schedule a hearing to consider the petition. The Committee's decision will contain recommendations regarding the appropriateness of a funding award extension, the length of extension, and any reductions or penalties to be imposed. The Committee's decision and recommendations will become final when the Commission formally approves them at a regularly scheduled Business Meeting.

It should be noted that the extension provisions of Public Utilities Code section 383.5(c)(2)(B) were recently recodified under Senate Bill 1038 (Sher, Statutes of 2002, Chapter 515) and are now set forth in Public Utilities Code section 383.5(d)(5). Except for the citation, these extension provisions remain unchanged.

RCWMD Lamb Canyon Landfill Gas Project

The Lamb Canyon Landfill Gas Project, with a capacity of 1.0 megawatts, was conditionally awarded \$534,457.60 (funding award agreement REN-98-043, approved by the Commission in June 1999) in the June 1998 auction (NOA 500-97-506). The award was based on RCWMD's incentive bid of 1.48 cents/kWh. The project is located in Riverside County.

At the time of the June 1998 auction, RCWMD submitted a project schedule to the Commission showing that the Lamb Canyon Landfill Gas Project would be on-line before January 1, 2002, identifying an on-line date of April 15, 2000. However, the project has been delayed and is currently requesting an on-line date of December 15, 2004.

RCWMD Petition

RCWMD submitted a formal petition to the Commission on August 2, 2002, asking to have the award for the Lamb Canyon Gas Project extended pursuant to the amendment of Public Utilities Code section 383.5(c)(2)(B). The petition requests the Commission to determine that the project was not operational by January 1, 2002 due to "circumstances beyond the control of the developer" and seeks a 36-month extension to the on-line date for the Lamb Canyon Gas Project to December 15, 2004.

After reviewing the petition and deeming it complete, the Committee determined that a hearing to address the petition was unnecessary and that it would exercise its discretion to issue a decision based on the petition alone.

Discussion

The discussion that follows will first address the requisite findings under the law, then the length of any funding award extension, and lastly any appropriate reduction or penalty of the project's award.

Findings Under Public Utilities Code Section 383.5(c)(2)(B)

Under California law, a project awarded funding from the Commission's New Renewable Resources Account remains eligible to receive five years of funding even if the project is not operational by January 1, 2002, if the Commission finds the delayed operation was due to circumstances beyond the project developer's control. This law is now set forth in Public Utilities Code section 383.5(d)(5), but was previously set forth in Public Utilities Code section 383.5(c)(2)(B), and provided as follows:

Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, *unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer.* Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007. [Emphasis added.]

To make the requisite finding, the Commission must determine if there were circumstances beyond RCWMD's control that prevented the project from coming on-line by January 1, 2002.

In its petition, RCWMD states that the primary reason for the delay is that RCWMD has been awaiting satisfactory operation and reliable power sales at the Badlands Landfill Gas Project before proceeding with the Lamb Canyon Landfill Gas Project. The delays experienced by the Badlands Landfill Gas Project are outlined in the Committee proposed decision on that project. RCWMD states in its petition that, "The WMD does not want to proceed with the Lamb Canyon project until all the problems at the Badlands project are worked out."

Finding Regarding the Lamb Canyon Landfill Gas Project

Based on the petition, the Committee finds that the delay in on-line date for the RCWMD Lamb Canyon Landfill Gas Project was not a result of circumstances beyond

RCWMD's control. RCWMD's petition clearly states that it made a decision not to pursue the Lamb Canyon Landfill Gas Project pending satisfactory operation of another facility under development. Although RCWMD's decision is understandable, given its obligation to the citizens of Riverside County to ensure project feasibility before proceeding with construction, it is not a circumstance that is beyond RCWMD's control.

Length of Award Extension

The Committee recommends that the Lamb Canyon Landfill Gas Project not have its funding award extended, and that the project not receive any incentive payments for generation after December 31, 2006, as stated in NOA 500-97-506.

Reduction of Funding Awards

The *Guidebook*, NOA 500-97-506, and Funding Award Agreement REN-98-043 all contain provisions for reducing funding awards for auction winners for nonperformance or other reasonable cause. The Committee believes that it is justified to reduce the funding award for the Lamb Canyon Landfill Gas Project by one-sixtieth ($1/60$) for each month after January 1, 2002 that the project has not come on-line.